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## Information Commissioner's Office

Internal Audit 2013-14: Governance and decision making during periods of uncertainty

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# 1 Executive Summary

## 1.1 Background

The Information Commissioner's Office (ICO) continues to see significant externally driven change to its operating environment. Beyond this, management informs us of organisational drives to improve efficiency, effectiveness and greater levels of 'joined-up' working. Such changes will require realignment of strategic and operational plans, with decisions to be made on the course of action to be taken to meet long term objectives, as well as having to respond to short term demands on resources.

Our review has sought to assess the structures and processes in place to make key decisions within the organisation and the basis on which they have been made and communicated.

## 1.2 Scope

Our review has focused on the decision making structures in place at Management Board (MB) and Executive Team (ET) meetings, considering:

- Approval processes;
- Supporting documentation;
- Prioritisation; and
- Follow up and communication.

## 1.3 Approach to delivery of scope

We have carried out our review against the agreed scope through a series of meetings with members of the Executive, including the Information Commissioner, and with two Non-Executive Directors (NEDs), as well as other key stakeholders involved in the governance structures.

Our meetings have been supported by reviews of meeting minutes, papers, terms of reference and other relevant documentation.

## 1.4 Conclusion

Overall, the ICO has established broadly fit for purpose governance arrangements and structures that have served its needs to date. Moreover, those arrangements compare more favourably than those we have seen in place at other Corporations Sole. We have identified areas where existing arrangements can be improved, in response to helping the ICO tackle its future challenges rather than address significant weaknesses.

As a Corporation Sole, the responsibility and accountability for decision making is vested within the Information Commissioner and the governance structures in place are utilised as forums to input into and challenge proposed courses of action. However the Commissioner clearly cannot make every decision within the organisation and many decisions are delegated; it is however unclear as to where delegated authorities lie.

The ET comprises senior ICO staff and meets formally roughly twice every month and informally in between each meeting. Members responded positively to the format and open nature of the meetings; however we found that there was a focus on operational matters. There is a requirement for greater focus on the ICO's strategic direction or performance.

The MB comprises members of ET and four Non-Executive Directors. This is an advisory board and not a decision making body. Again, there was positive feedback from those we spoke to (both at Executive and NED level) on the meetings and the discussion and challenge that takes place before actions are agreed.

For both ET and MB meetings, there was a disparity between the level of debate, challenge and discussion which members characterised and the meeting minutes. Further the processes to follow up agreed actions to their conclusion should be improved.

The NEDs also provide valued support outside of the formal meetings on specific projects and activities.

More recently, a Leadership Group (LG) has been established, with intentions of it being a decision making body. There is no guidance as to where decisions will be made and what the various powers of delegation are to each Group/Board.

In the rest of the report we explore these matters further.

## 2 Key findings and recommendations

We set out below our key findings and recommendations.

### **Corporation Sole and impact on decision making Findings**

Our review has been carried out under the continued awareness of the role that the Information Commissioner has as a Corporation Sole, an independent official appointed by the Crown and accountable to Parliament.

This provides a different governance structure to a traditional Board, with all decision making responsibility vested within the Information Commissioner. Therefore, whilst both the MB and ET's terms of reference highlight their respective responsibilities, there is little in the way of documented formal decision making processes or delegated authorities. Clearly in any organisation there is a need to make some level of decisions at all levels. Given the responsibility and accountability for the Commissioner we would expect to see either formal delegations of authority, or matters reserved for the Commissioner.

Overall, we have found that such arrangements have been largely fit for purpose to meet the ICO's needs to date. However given the external pressures and evolving internal and external environments, the Information Commissioner should keep the governance arrangements under continual review.

Our discussions and review did identify a lack of clarity over what information is taken to MB and ET to discuss prior to a decision being

taken or actions being agreed. The terms of reference provide some level of guidance, but this is focussed around financial thresholds.

### **Recommendations**

1. It should be clarified where decisions are to be made, based on either clearly matters reserved for the Commissioner, or through specifically delegated powers.
2. The terms of reference for ET and the MB should make clear the information that they receive for discussion prior to decision making.

### **Executive Team Findings**

This small group of senior staff formally meets on a bi-monthly basis and has informal catch up meetings in the intervening periods.

Our meetings with members of the ET identified a consistent view that the ET is seen as the "engine room" of the organisation. Particular positive views expressed were that as a small group representing the operational and policy aspects of the organisation there is a good level of debate amongst members, who are willing to challenge each other in a healthy way.

Their size and frequency of meetings were also cited as positive attributes to enable issues to be tackled as they arise, but in a formal environment.

All members of Executive we met with commented positively on the level of discussion, debate and challenge that takes place within meetings. Our review of the meeting minutes and supporting papers found that it was

difficult to substantiate the level of challenge, debate and discussion raised in the meetings that had been identified to us.

Further, we found that the focus of meetings is largely on the financial and operational matters of the organisation with little to no review of on-going performance against the Strategy or discussions on how a shifting landscape will impact on the current and future risks and strategy of the ICO.

It is also unclear, both from the ET's terms of reference, and from the meeting minutes themselves, what protocols exist surrounding the information to be reported by ET to the MB, and how discussions or actions agreed at MB are reflected upon at ET.

### Recommendations

3. ET should ensure that there is sufficient focus on the delivery of the strategy and how the organisation is working to address the more medium to long term strategic challenges. To achieve this, the ET should ensure that:
  - it confirms that the strategy is sufficient to meet the needs of the ICO in defining the direction of the organisation and the key aims, objectives and goals of the Strategy, against which progress can be measured; and
  - progress against those measures should be received and scrutinised by the ET to enable a wider discussion and debate on longer term themes.
4. Meeting minutes should be prepared in a manner that capture the key challenges and discussion points with the ET that inform the agreed course of action. This should also be considered for other meetings (e.g. MB/LG).

### Management Board

#### Findings

MB comprises four NEDs and the members of ET.

A consistent view we received with those we met with was that MB is not a decision making body. It is seen as an advisory panel to the Information Commissioner, where NEDs can bring to bear their skills and experience from outside the organisation to challenge, question and input into the discussions and decisions made by the Information Commissioner. Each meeting starts with a scene setting update from the Information Commissioner, which is seen as valuable by all NEDs in providing insights into the internal and external challenges facing the ICO.

### Recommendations

5. Given the ICO's strategy has been published, we would expect the discussions and thus the agenda, at such meetings to be aligned to the core components of this strategy.

### Non-Executive Directors

#### Findings

NEDs are appointed based on their skills and experience outside of the ICO, with an aim to maintain an effective balance of Whitehall and corporate experiences within the group of NEDs. Currently there is a balanced skillset, but with changes in membership due, that balance will need to be maintained.

There is an induction process for NEDs, but this is not then supported by formal ongoing training. There was however clarity from ET and the NEDs we spoke to that NEDs were expected to keep themselves up to date with relevant developments. The Information Commissioner's regular updates to MB meetings were also cited as providing valuable ongoing insights into developments both within and affecting the ICO.

Many we spoke with, including the NEDs themselves, highlighted that the real value of the NEDs is achieved from the support they provide outside of the meetings on projects/other matters where they are called in. Questions were raised by some as to whether NEDs could be used more often in this way, to work alongside the organisation on specific projects.

One interviewee suggested the NED role is replaced with bringing in people with such skills as consultants to specific projects. However this removes the independent role of the NED, which was widely seen as a useful point of challenge to the ICO. It also isolates the NEDs as individuals, whereas a forum such as the Audit Committee or MB provides the collective experience and insights of the range of NEDs.

Both NEDs we spoke to valued the strategy day that they attend annually as an opportunity to provide independent input and challenge. However the timing of this review means that by this point in the cycle the strategy is largely agreed and the value of the NED input is therefore limited.

### Recommendations

6. The NEDs should be formally engaged prior to the strategy away day to input into the ICO strategy whilst it is still being formed.
7. Allocate NEDs to ongoing ICO projects/strategic activity to provide independent challenge and scrutiny to the activities.
8. Ensure that the balance of corporate and Government skills mix of the NEDs is maintained as part of the next recruitment process.

### Leadership Group

#### Findings

The LG was established in November 2012 and comprises members of ET as well as other managers from across the organisation. There are no terms of reference in place for the Group. From those that we have held discussions with and from papers we have seen, we understand it has been set up as a decision making group. However without terms of reference or a clear understanding from those we met with as to what it will make decisions on there is a question as to how it fits in with the work of the ET.

Further, during our meetings comments were made regarding the difficulty in finding agenda items for the LG to discuss.

From those we met with, there was a mixed view, both at Executive and NED level as to whether the LG will be effective as a decision making group within the existing governance framework.

We see the benefit in regular meetings of management across the organisation to share information and foster a culture of understanding what different parts are doing in pursuit of operational and strategic objectives. This would be different to a decision making body, but could still have input into strategy setting, performance monitoring and risk management arrangements. It could also be used as a forum to disseminate relevant points from the ET/MB meetings.

### Recommendations

9. As Corporation Sole, the Commissioner utilises the Leadership Group to disseminate and inform a wider management group. When the Commissioner is present at the Leadership Group decisions can be made. Where decisions are made at this Group, the ICO must ensure they are appropriately minuted and decisions communicated, as with other groups.

### Effective follow up of actions

#### Findings

At both ET and MB meetings we have seen papers presented and actions agreed for follow up in the future which are omitted from future agendas.

The discipline of following up agreed actions and tracking the implementation of decisions is critical to ensure that the governance process is being applied in line with agreed delegations and remits across the ICO.

### Recommendations

10. Establish formal action tracking logs for MB/ET, with items retained on there until they are concluded upon.
11. We recognise that it may not be practical for management to identify exactly what they are going to do and by when to address the

recommendations proposed in this report. We suggest that in say 18 months' time, the Information Commissioner, or other appropriate member of management, provide a formal update to the Audit Committee on the actions taken to address the recommendations and how they have helped improve governance across the ICO.

This would be more pragmatic than reporting progress against them at each Audit Committee meeting.

## **2.1 Elsewhere in the sector / Points of interest**

The establishment of Police & Crime Commissioners has seen the introduction of a new cohort of Corporations Sole.

While the codes of corporate governance in place provide an overview of the roles and responsibilities of the PCC, and include delegated authorities of chief finance officers and deputy commissioners, we have yet to see a PCC that supports itself with a MB similar to the ICO's. Mandatory panels are in place to challenge the PCC on delivery of its Crime Prevention Plan, however these comprise elected local authority members rather than non-executives.

When we have looked wider at other Corporations Sole, we have again seen a lack of formal, non-executive support (outside of an audit committee) provided to the Corporation Sole. This suggests that what the ICO has put in place is unique and with little direct reference for best practice. Therefore our recommendations have been positioned by being pragmatic to the size and remit of the ICO, but also considering those elements of good practice that are applicable from organisations with a Board structure.

## **2.2 Acknowledgement**

We would like to take this opportunity to thank the staff involved in this audit for their co-operation during this internal audit.

### 3 Recommendations

Corporation Sole and decision making	
Recommendation	Management response
1. It should be clarified where decisions are to be made, based on either clearly matters reserved for the Commissioner, or through specifically delegated powers.	<p><b>Unsure.</b></p> <p>As background the Commissioner, as Corporation Sole, is ultimately responsible for all decisions made at the ICO. However the Data Protection Act provides him with the power to delegate decisions. The Commissioner has appointed a Board (MB) to advise and support him in his work and has an Executive Team (ET) comprising senior managers who make decisions either collectively as ET or in their own right. Terms of reference define the roles of MB, ET and other governance groups and where budgets are delegated there is a record of this.</p> <p>Managing Public Money clearly states that as Accounting Officer the Commissioner must personally sign the accounts, annual report and governance statement.</p> <p>There is therefore an articulated system of delegation which already provides some clarity. It could be clearer, however, given that the current system allows short term flexibility in decision making in the absence of the Commissioner, and</p>

	<p>given the size and nature of the ICO, it is not proposed to compile a fuller list of matters reserved for the Commissioner. This does not mean however that the current system is not capable of being improved and the matter will be kept under review.</p> <p><b>To be kept under review</b></p>
2. The terms of reference for the ET and the MB should make clear the information that they receive for discussion prior to decision making.	<p><b>Agreed.</b></p> <p>It is the case that there are standard agenda items for MB which effectively define what papers come to the Board, and standard cover sheets for ET papers which define what information is required for decisions. However the terms of reference for the various governance committees can be reviewed to see if the information requirements can be made more explicit.</p> <p><b>This is to be done by the April 2014 MB.</b></p>
<b>ET</b>	
<p>3. The ET should ensure that there is sufficient focus on the delivery of the strategy and how the organisation is working to address the more medium to long term strategic challenges. To achieve this, the ET should ensure that:</p> <ul style="list-style-type: none"> <li>The ET confirms that the strategy is sufficient to meet the needs of the ICO in defining the direction of the organisation and the key aims, objectives and goals of the strategy, against which progress can be measured; and</li> </ul>	<p><b>Agreed in principle</b></p> <p>Strategy relates to the long term or overall aims of the organisation and how these are to be achieved; eg the Information Rights Strategy and the rolling three year ICO Plan.</p> <p>The Information Rights Strategy was published in December 2011 and has not been updated since. The ICO Plan is updated annually, and currently the</p>



<ul style="list-style-type: none"> <li>Progress against those measures should be received and scrutinised by the ET to enable a wider discussion and debate on longer term themes.</li> </ul>	<p>ICO is consulting on a high level statement of direction to help inform development of its plans. In respect of the first part of the recommendation therefore the ICO ought to ensure that strategies such as the Information Rights Strategy are at least reviewed annually by MB to ensure that they still meet the needs of the organisation. At the moment this is done in part.</p> <p>In respect of the second part, that progress be measured, MB undertakes a quarterly review of performance against the ICO Plan but ET does not. And progress against the Information Rights Strategy has not been measured in either forum. However, the ICO Plan directly references the strategic outcomes from the Information Rights Strategy and links these to the corporate objectives. So there is a link between performance against the ICO Plan and the Information Rights Strategy.</p> <p>There is therefore a mixed story to tell. And it is difficult to identify specific actions which will make ET more strategic, and indeed to measure whether this happens.</p> <p><b>To keep under review.</b></p>
<p>4. Meeting minutes should be prepared in a manner that capture the key challenges and discussion points with the ET that inform the agreed course of action. This should also be considered for other meetings (e.g. MB/LG).</p>	<p><b>Agreed in principle.</b></p> <p>Meeting minutes follow two different styles at present. For example MB minutes are fuller and contain more discussion than ET where the minutes now follow a format explicitly detailing "issue" and "decision" in quite a succinct way. This reflects the different nature of the meetings.</p> <p>Both styles do seek to capture the key points of the</p>

	<p>discussion and the reasons for any decision, but without repeating detail which is normally found in supporting papers.</p> <p>However supporting papers are not always published so it is recognised that in some cases readers of the minutes alone might not get the full picture.</p> <p>It is also worth noting that the fuller style of minutes do take longer to write and agree than shorter minutes.</p> <p>Having said this, there is an opportunity to consider how best to capture the key challenges and discussion points in the minutes as stand-alone documents and this will be done.</p> <p><b>To keep under review.</b></p>
<b>Management Board</b>	
5. Given the ICO's strategy has been published, we would expect the discussions and thus the agenda, at such meetings to be aligned to the core components of this strategy.	<p><b>Unsure.</b></p> <p>Whilst in theory a direct alignment of the MB agenda and papers with the objectives in the ICO Plan (for example) seems sensible, the current agenda and papers have evolved over time and feedback from MB members has not indicated any problem. This does not mean new approaches should not be tried and over the course of the next few years the current agenda and style of papers will evolve.</p> <p><b>To keep under review.</b></p>
<b>Non-Executive Directors</b>	
6. The NEDs should be formally engaged prior to the strategy away day to input into the ICO strategy whilst it is still being formed.	<p><b>Agreed in principle.</b></p> <p>We do need to recognise that the Executive has to have an idea of the strategy before discussion with</p>

	<p>the NEDs. At the same time they need to be prepared to change that strategy if the NEDs suggest it.</p> <p><b>To keep under review.</b></p>
7. Allocate NEDs to ongoing ICO projects/strategic activity to provide independent challenge and scrutiny to the activities.	<p><b>Agreed in principle.</b></p> <p>To an extent this takes place already. However there is a need to ensure that this happens, linked to the annual review of NED performance by the Commissioner.</p> <p><b>To keep under review.</b></p>
8. Ensure that the balance of corporate and Government skills mix of the NEDs is maintained as part of the next recruitment process.	<p><b>Agreed in principle.</b></p> <p>This also cropped up as part of the annual self-assessment exercise for the ICO's committees. The Commissioner is aware of the need to ensure a balanced NED intake and this will be taken into account when the next exercise takes place in 2015.</p> <p><b>To keep under review.</b></p>
<b>Leadership Group</b>	
9. As Corporation Sole, the Commissioner utilises the Leadership Group to disseminate and inform a wider management group. When the Commissioner is present at the Leadership Group decisions can be made. Where decisions are made at this Group, the ICO must ensure they are appropriately minuted and decisions communicated, as with other groups.	<p><b>Agreed in principle.</b></p> <p>This happens already but as the Leadership Group develops the style and content of the minutes will be continually reviewed and revised if needed.</p> <p><b>To keep under review.</b></p>
<b>Effective follow up of actions</b>	
10. Establish formal action tracking logs for MB/ET, with items	<b>Agreed.</b> Currently logs of outstanding action points

retained on there until they are concluded upon.	are kept for all meetings where Corporate Governance provides secretariat support. These logs (or similar) can easily be extended to cover decisions made at the meetings which would not normally merit an action point as such. <b>Complete.</b>
11. We recognise that it may not be practical for management to identify exactly what they are going to do and by when to address the recommendations proposed in this report. We suggest that in say 18 months' time, the Information Commissioner, or other appropriate member of management, provide a formal update to the Audit Committee on the actions taken to address the recommendations and how they have helped improve governance across the ICO. This would be more pragmatic than reporting progress against them at each Audit Committee meeting.	<b>Agreed.</b>

## A Internal audit approach

### Approach

Our audit has been carried out in accordance with the guidance contained within the Public Sector Internal Audit Standards (2013), and the Auditing Practices Board's 'Guidance for Internal Auditors'.

Our internal audit approach is based upon the underlying principles of the UK Corporate Governance Code (2012) that requires management to identify, assess and manage the risks that are significant to the achievement of the organisation's overall business objectives. Our role as internal auditor is to provide objective and independent assurance to the Board and management that it is doing so successfully for each of the areas being audited.

We have achieved our audit objectives by:

- meeting with key staff to gain an understanding of the decision making and prioritisation arrangements in place, building upon the information we have already gained through our audit planning process;
- reviewing key documents that support the processes in place; and
- assessing how the ET prioritise, communicate, monitor and report on key decisions and the implications that such decisions may have on strategic objectives and day to day operations.

The findings and conclusions from this review will support our annual opinion to the Audit Committee on the adequacy and effectiveness of governance arrangements.

### Responsibilities

It is the responsibility of management to ensure that there are adequate controls and activities in place to ensure that the organisation's business objectives can be met and that the risks to the organisation are minimised.

### Additional information

#### Client staff

The following were consulted as part of this review:

- Neil Masom: Non-Executive Director
- Andrew Hind: Non-Executive Director
- Christopher Graham: Information Commissioner
- Graham Smith: Deputy Commissioner and Director of Freedom of Information
- David Smith: Deputy Commissioner and Director of Data Protection
- Daniel Benjamin: Director of Corporate Services
- Simon Entwisle: Director of Operations
- Peter Bloomfield: Senior Corporate Governance Manager
- Andrew Cryer: Head of Finance
- Mike Collins: Head of Organisation Development



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